

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL MISC.APPLICATION No 3163 of 1998

For Approval and Signature:

Hon'ble MR.JUSTICE H.R.SHELAT

=====

1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

RAJESHBHAI N BADHIRE

Versus

STATE OF GUJRAT

Appearance:

MR VS PANDYA for Petitioner

Mr. S.P. Dave, APP for Respondent No. 1

MR AD SHAH for Respondent No. 2

CORAM : MR.JUSTICE H.R.SHELAT

Date of decision: 28/08/98

ORAL JUDGEMENT

Rule. Mr. A.D. Shah, learned advocate for respondent No.2 and Mr. S.P. Dave, learned APP for respondent No.1 waive the service of Rule. At the request of the learned advocates the application is taken on hand for hearing today itself.

2. The petitioner and the respondent No.2 knowing each other had gradually cultivated homely relations. The petitioner was in need of money. He therefore

requested for the sum. The respondent No.2 was at that time having the money on hand, paid Rs. 2,00,000/- so as to help the petitioner who was at that time facing the financial hardship. He had to return the amount within three months. Against the payment of Rs. 2,00,000/- the petitioner had given a cheque to the respondent No.2 assuring that the same would be honoured as and when presented in the Bank. In the month of May 1996 the cheque issued by the petitioner was presented in the Bank but unfortunately it was not honoured for want of sufficient fund in the account of the petitioner. The respondent No.2 then suspected the bonafides of the petitioner. She gave a notice. Within 15 days after the service of notice, no payment was made. The respondent No.2 then realised that the petitioner had committed the offence punishable under Section 138 of the Negotiable Instruments Act. On her behalf therefore her power of attorney holder filed the complaint in the Court of the Chief Judicial Magistrate, Ahmedabad (Rural) at Ahmedabad. The learned Magistrate, on receipt of the complaint, issued the process. Having come to know about the issuance of the process the petitioner has by this application approached this court for getting the complaint quashed invoking Section 482 of the Criminal Procedure Code.

3. During the course of the hearing today, the parties present, in the Court have settled their dispute. They tender the statement of compromise. The same is taken on record. As per the statement of compromise, the petitioner has paid Rs. 1,50,000/- to the respondent No.1 today, which the respondent No.1 has received. Rest of the amount of Rs. 48,000/- would be paid by the petitioner to the respondent No.2 by monthly instalments each of Rs.2000/-. The first monthly instalment is to commence from September 1998. As per the settlement the civil suit filed by respondent No.2 against the petitioner for the recovery of the sum has to be withdrawn within 15 days from today. In view of such settlement, the dispute in fact does not survive and it will be futile to ask the parties to face the trial and then have the order of acquittal which would unnecessarily put the parties to harassment, difficulty and inconvenience. In view of the settlement, when cause of action does not survive no useful purpose would also be served if the parties are asked to go with the trial.

4. For such reasons, this is a case wherein the process issued by the learned Chief Judicial Magistrate, Ahmedabad (Rural) at Ahmedabad in Criminal Case No. 2482 of 1996 on his file is required to be quashed along with

the complaint. In the result, the application is allowed and the complaint, being Criminal Case No. 2482 of 1996 as well as the process issued by the learned Chief Judicial Magistrate thereon are hereby quashed and the petitioner is discharged of the charge put forth in the complaint. Rule accordingly made absolute.

.....

(rmr).